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In re Application of	:	
Luthra, Ajay Kumar et al	:	
Application No.: 09/936587	:	DECISION ON
PCT Application No.: PCT/GB00/00913	:	
International Filing Date: 13 March 2000	:	PETITION UNDER
Priority Date: 13 March 1999	:	
Attorney Docket No.: 16230-8416	:	37 CFR 1.137 (b)
For: BIOCOPATABLE	:	
ENDOPROSTHESES	:	

This is in response to applicant's petition under 37 CFR 1.137 (b) filed on 20 May 2004, to revive the above-identified application.

#### BACKGROUND

On 13 March 2000, applicant filed international application number PCT/GB00/00913, which claimed priority to an earlier filed British application 9905759.8 filed 13 March 2001. A copy of the international application was communicated from the International Bureau to the United States Patent and Trademark Office on 21 September 2001. A demand for international preliminary examination, in which the Untied States was elected, was filed on 02 October 2000, prior to 13 October 2000, the end of the 19 month period from 13 March 2000 priority date. The period for paying the basic national fee is thus 30 months and ended at midnight on 13 September 2001.

On 13 September 2001, a transmittal letter for entry into the national stage in the United States was filed along with, inter alia: a copy of the International Preliminary Search Report, but not an oath or declaration, nor the basic national fee.

On 03 December 2001, a petition for revival under unintentional abandonment was filed with the petition fee and the basic national fee for entry into the National Stage in the United States.

On 04 January 2002, the United States Patent and Trademark Office issued a Notification of Abandonment for failure to pay the National Stage fee.

On 23 October 2002, the United States Patent and Trademark Office issued a decision granting the revival of the application.

On 06 March 2003, A "Notification of Missing Requirements under 37 CFR 371 in the United States Designated/Elected Office (DO/EO/US)" was mailed, requesting submission of an oath or declaration, in compliance with 37 CFR 1,497 (a) and (b), within the later of 2 months from the mailing date of the notification, or, 32 months from the priority date.

On 20 February 2004, the United States Patent and Trademark Office issued a Notification of Abandonment for failure to respond to the Notification of Missing Requirements.

On 20 May 2004, applicant submitted a petition for revival.

### DISCUSSION

A petition to revive under 37 CFR 1.137 (b) must be accompanied by: (1) a proper response, unless it has been previously submitted; (2) the requisite petition fee as required by 37 CFR 1.17 (m); (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137 (c).

On 20 May 2004, applicant filed the present petition to revive the national stage application under 37 CFR 1.137 (b). Filed with the present petition were, inter alia: (1) the requisite \$665 Petition fee (small entity); (2) a declaration; and (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," plus \$65 (small entity) surcharge for furnishing the oath or declaration more than 30 months from the earliest priority date.

The declaration filed on 20 May 2004 is defective, in that it is a composite of page one of the declaration by current counsel and the attached signature pages (page 2 and 3) of another declaration executed by the British inventors. The signature pages show evidence of having been transmitted by facsimile, whereas the first page does not. A copy of the original executed declaration is required.

The application and papers have been reviewed and have been found to be not in compliance with 37 CFR 1.137 (b).

### CONCLUSION

The petition to revive the international application under 37 CFR 1.137 (b) is DISMISSED as to the National stage in the United States of America.

If reconsideration on the merits of this decision is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137 (b)." No petition fee is due. Extensions of time are available under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT,  
Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,  
Virginia 22313-1450, and USA and address the contents of the letter to the attention of the Office  
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